

MESTECHKIN LAW GROUP P.C.

1.212.256.1113

WWW.LAWMLG.COM

200 VESEY STREET

24TH FLOOR

NEW YORK, NY 10281

July 21, 2017

Via ECF

Honorable Judge Katherine B. Forrest
United States District Court
Southern District of New York
500 Pearl Street, Room 1950
New York, NY 10007

Re: *Catzin et al. v. Thank You & Good Luck Corp. et al.*, No. 15-cv-7109(KBF)

Dear Honorable Judge Forrest,

We represent defendants 115th Street and First Ave Laundromat Inc., OffBroadway Laundromat Inc. and 2167 3rd Ave. Laundromat LLC in the above-captioned proceeding. We write on behalf of all defendants in partial opposition to Plaintiffs' July 14, 2017 motion *in limine* (ECF No. 253).

Motion In Limine 2 – Tax Returns

If any of the Plaintiffs intends to give testimony concerning their affirmative claims, Defendants intend to ask questions on cross examination concerning whether Plaintiffs' have filed tax returns to impeach their credibility. Federal Rule of Evidence 608(b) provides that specific instances of misconduct "may . . . in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness". Evidence that a witness has failed, for years, to file a tax return is a matter which affects the witness' credibility. *See Chnapkova v. Koh*, 985 F.2d 79, 82 (2d Cir. 1993); *see also Chamblee v. Harris & Harris, Inc.*, 154 F. Supp. 2d 670, 681 (S.D.N.Y. 2001) ("Plaintiff's testimony in the case at bar will be extraordinarily important, and evidence of her failure to pay taxes is admissible. It bears directly on her propensity for truthfulness, and will be admitted for impeachment purposes if plaintiff takes the stand"); *Mischalski v. Ford Motor Co.*, 935 F. Supp. 203, 208 (E.D.N.Y. 1996) (noting that failure to pay income taxes bears "directly on a plaintiff's propensity for truthfulness and must be admitted for impeachment purposes if plaintiff takes the stand.").

Plaintiffs have indicated in their pretrial submissions that they will be offering testimony to substantiate their claims. Thus, there is no dispute that Plaintiffs' testimony will be critical and that Defendants should be entitled to impeach Plaintiffs' testimony by cross-examining them on their ever having filed tax returns should they take the stand.

In their motion for preclusion, Plaintiffs make two arguments in support of preclusion, each of which must be rejected. First, Plaintiffs argue that there is no useful information that such questioning can yield, but Plaintiffs fail to dispute (or even mention) Defendants' intended use of this questioning for impeachment. As discussed, asking questions about whether a witness has filed to file taxes is permissible under the case law in this Circuit to impeach credibility.

Second, Plaintiffs argue that asking such questions is "simply another way to introduce plaintiffs' immigration status". But, this is a false equivalency. A citation is not necessary for the proposition that all types of people fail to file taxes, including natural born citizens, naturalized citizens, permanent resident aliens and yes, undocumented aliens. An admission that Plaintiffs have not filed taxes is not an admission that they are undocumented aliens. There is thus little, to no, danger that the jury will exercise any anti-immigrant bias against Plaintiffs just because they respond that they did not file taxes.

Further, Plaintiffs cannot be heard to complain that undocumented aliens cannot file taxes for fear of being discovered and/or deported since the Internal Revenue Service requires that undocumented aliens file taxes, and has even devised an anonymous procedure to allow undocumented aliens to file taxes that involves obtaining an Individual Taxpayer Identification Number. (*See* IRS Bulletin 1915 "Understanding Your Individual Tax Identification Number" at p. 10, excerpted hereto.) Plaintiffs' decision to file (or not to file) taxes is a free choice that they make – not a consequence of immigration status – and they should not be relieved of the consequences for their choices particularly when they are giving sworn testimony in a court of law against Defendants who have a due process right under Fed. R. Evid. 608(b) to defend themselves.

Motion In Limine 3 – Financial History

Plaintiffs are correct that Defendants intend to use evidence of Plaintiffs' financial situation to show that Plaintiffs have an incentive to lie. Use of such evidence to impeach the credibility of a witness and her testimony is well-established in this Circuit. *See, e.g.,* *See, e.g., Elgi Holding, Inc. v. Insurance Co. of N. Am.*, 511 F.2d 957, 959 (2d Cir. 1975) (where insured tried to establish himself as successful businessman, evidence of financial difficulties was relevant to questions of motive and credibility); *Nichols v. Aetna Life and Cas. Co.*, No. 94-1622, 1995 WL 740007, at *1 (N.D.N.Y. Dec. 6, 1995) ("Plaintiff's financial situation is relevant to his potential motive to falsify"); *Wagschal v. Sea Ins. Co., Ltd.*, 861 F. Supp. 263, 265 (S.D.N.Y. 1994) (denying motion to exclude where "evidence may be relevant to the issue of the Wagschal's financial condition and thus their motive").

Plaintiffs' only response to this intended proper use is that it would be prejudicial to Plaintiffs because the jury could infer from this evidence that Plaintiffs are undocumented aliens. However, no citation is needed for the proposition that many people in the United States are poor, including citizens as well as non-citizens and undocumented aliens. A jury is no less likely to conclude that Plaintiffs are United States citizen or permanent legal immigrants than they are to conclude that they are illegal immigrants. Plaintiffs' concerns are unfounded and nonetheless are insufficient to deprive Defendants' of their right to impeach the credibility of Plaintiffs' testimony.

Motion In Limine 4 – Video Footage

Throughout this case, Plaintiffs have given wildly exaggerated and false claims of the number of hours that they have worked, including the times that they commenced work, the times that they departed work and the times for which they were given lunch breaks. In response to these claims, Defendants set up video cameras of the laundromats at which some of the Plaintiffs worked, including the laundromat at 115th Street and First Avenue, where Plaintiffs Catzin and Clemente worked, and where Plaintiff Clemente still works today. The video footage shows regular instances of Plaintiffs going into and out of work at hours that do not match the hours that they recorded in a time log maintained by the laundromat for purposes of calculating hours worked for payroll purposes. The discrepancy between the video and the log books is probative of the lack of truthfulness and credibility of Plaintiffs' testimony and thus should be allowed in for impeachment purposes under Fed. R. Evid. 608(b) should Plaintiffs take the stand and testify.

Yours truly,

/s/ Oleg A. Mestechkin

Oleg A. Mestechkin



Understanding Your IRS

Individual
Taxpayer
Identification
Number
ITIN



TABLE OF CONTENTS

Important Information to Note	4	Employment Issues	14
Reminders	4	Are ITINs valid for work purposes?	14
General Information	5	Which aliens are eligible to receive Social Security Numbers?	14
What is an ITIN?	5	What student visas qualify for employment?	14
What is the purpose of an ITIN?	6	Which foreign students qualify for ITINs?	14
When did IRS start issuing ITINs and why?	6	General Information for Completion of Form W-7/W-7(SP)	14
Are ITINs valid for identification?	6	Line by Line Instructions for Completing Form W-7/W-7(SP)?	14
How do I know if I need an ITIN?	6	Signature	18
Who must apply?	6	Who can sign the Form W-7/W-7(SP) if the applicant is a dependent under 18 years of age?	18
Examples of who needs an ITIN	6	Who can sign the Form W-7/W-7(SP) if the applicant is a dependent 18 years of age or older?	18
When will my ITIN be deactivated?	7	Who can sign the Form W-7/W-7(SP) if the applicant cannot sign their own name?	18
How do I apply for an ITIN?	7	Mailing the Application:	18
Deceased Taxpayers	8	Where should I mail my application?	18
Where can I get a Form W-7/W-7(SP)?	8	Additional Information	19
What information must be included on Form W-7/W-7(SP)?	8	Where can I go to get help with my ITIN application?	19
Where do I attach my Form W-7/W-7(SP)?	8	Where can I obtain additional information to help me with my ITIN application?	19
Where do I file my Form W-7/W-7(SP)?	9	Where can I call to get help with my W-7/W-7(SP) application?	19
What are Acceptance Agents?	9	Frequently Asked Questions and Answers	19
Will I have to pay to get an ITIN?	9	Exhibits	22
When should I apply for my ITIN?	9	Supporting Documentation Table	22
How long does it take to get an ITIN?	10	Exceptions to the Tax Return Filing Requirement Chart	23
Can I get an ITIN if I am an undocumented alien?	10	Examples of Completed Form W-7s for "Exceptions"	29
Can I e-file a Tax Return with ITIN?	10	Form W-7/W-7(SP) Check List	35
Is the Form W-7 available in any foreign language?	10	Sample Letter from Withholding Agent	36
Documentation	10	Copy of Form W-7	38
What are the documentation requirements when applying for an ITIN?	10		
What documents are acceptable as proof of identity and foreign status?	11		
What is a National Identification Card?	12		
Exceptions	12		
What are the exceptions to the requirement to attach a U.S. Federal income tax return?	12		
Dependency/Exemption Issues	13		
What are the rules for dependents?	13		



UNDERSTANDING YOUR IRS INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER

IRS assistance is available to help you
prepare your Form W-7/W-7(SP)

In the United States, call:
1-800-829-1040 (*toll-free*) or

Visit an IRS Taxpayer Assistance Center (TAC) or
Call your local IRS Taxpayer Assistance Center.

For listings of your local IRS TACs or IRS authorized
Acceptance Agents, go to www.irs.gov.

Overseas help can be obtained
from the following IRS offices:

Location	Address	Telephone Number
London, England	United States Embassy 24 Grosvenor Square London W1K 6AH England United Kingdom	[44] (207) 894-0477
Paris, France	United States Embassy 2 Avenue Gabriel 75382 Paris Cedex 08, France	[33] (1) 4312-2555
Frankfurt, Germany	U.S. Consulate Frankfurt Geissener Str. 30 60435 Frankfurt am main, Germany. See www.irs.gov .	[49] (69) 7535-3823

Persons outside the U.S. may call 1-267-941-1000 for
assistance (this is not a toll-free call).

IMPORTANT INFORMATION TO NOTE:

1. A passport is a stand alone document for proof of your
“identity” and “foreign status” only. If you submit an
original valid passport (or copy certified by the issuing
agency), you do not need to submit a combination of

at least two or more other current documents from
the Table on Page 22. However, any supplemental
documentation to prove “Exception” criteria, must
always be submitted along with your Form W-7

2. You may not e-file a tax return(s) using an ITIN
in the year in which it is received. If you apply for
and receive an ITIN this year, you may not e-file
any tax return using that ITIN (including prior year
returns) until next year. (See Page 10 for additional
information on e-filing).
3. Rental income distributions that are subject to federal
tax withholding/and or reporting have been added to
Exception 1(d).
4. The entry date in the U.S. (Line 6d, Form W-7) must
contain the complete date on which you entered
the United States for the purpose for which you are
requesting an ITIN. The date should be entered in
month/day/year format (mm/dd/yyyy). If you have
not entered the U.S. enter “Never entered the United
States” on this line.
5. Copies of a passport must include the U.S. visa pages
if a visa is required for your Form W-7 application.
(For example if you check reason box (f) or (g) on
Form W-7, make sure to include a copy of the visa).
6. Beginning in 2016, the IRS will deactivate an ITIN that
has been not been used on at least one tax return in
the past five years.

REMINDERS:

1. All documents must be original documents or copies
certified by the issuing agency.
2. Apply using the most current Form W-7, Application
for IRS Individual Taxpayer Identification Number or
Form W-7(SP), Solicitud de Número de Identificación
Personal del Contribuyente del Servicio de Impuestos
Internos. All subsequent notices and correspondence
will be sent to you in the language of the original
Form W-7/W-7(SP) that you submit to IRS.
3. All ITIN applications (including those submitted
by Acceptance Agents) must have an original valid
U.S. Federal income tax return attached to Form
W-7. ITINs will not be assigned prior to the taxpayer
filing a valid U.S. Federal income tax return (Form
1040, 1040A, 1040EZ, 1040NR, 1040NR-EZ,
1040X), to pay or claim withheld taxes unless an
“exception” to the tax return filing requirement is
met (see “Exceptions” later in this publication).

4. If an ITIN is being requested for a dependent under 14 years of age (18 if a student) then one of the supporting documents to prove “foreign status” and “identity” must be a Birth Certificate, unless a passport is submitted.
5. Supply original proof of identity and foreign status documents or copies certified by the issuing agency – there are only 13 acceptable documents (see the “Supporting Documentation Table” later in this Publication). The IRS will only accept original documents or copies certified by the issuing agency. If you will need your documentation for any purpose within 60 days of submitting your ITIN application, you may wish to apply in person at designated IRS TAC offices where your passports and National IDs (these are the only documents designated TAC offices are reviewing) will be reviewed and returned to you immediately. If your documents have not been returned after 60 days, or if your mailing address has changed since submitting your application, you may call 1-800-829-1040 (toll-free within the United States). Taxpayers overseas can contact one of the IRS offices listed in this publication or call 1-267-941-1000 (not a toll -free number) for assistance.
6. First apply for a Social Security Number (SSN) *if entering the U.S. with a green card or visa* that permits you to obtain employment in the U.S. If the Social Security Administration (SSA) will not issue a SSN, a letter of denial must be obtained and attached to your Form W-7. This requirement applies if you are requesting an ITIN under an “exception”. Refer to “Exceptions” for additional information for students, researchers and professors and individuals receiving honoraria payments.
7. Submit All Powers of Attorney to the IRS in English. Any POA’s received in a foreign language will be considered invalid, unless accompanied by a certified English translation.
8. If you are a guardian or other legally responsible person, requesting an ITIN for your dependent under 18 years of age, (18 if a student), submit documentation along with Form W-7 to prove your relationship to the applicant. These documents can include adoption papers or court appointment papers showing legal guardianship. The dependent must be listed on the U.S. Federal income tax return that is attached to your Form W-7.
9. Mail Form W-7/W-7(SP), proof of identity documents and an original valid U.S. Federal income tax return to:

Internal Revenue Service
ITIN Operations
P.O. Box 149342
Austin, TX 78714-9342

If you are using a private delivery service and need to provide a street address, send your Form W-7 package to:

Internal Revenue Service
ITIN Operations
Mail Stop 6090-AUSC
3651 S. Interregional, Hwy 35
Austin, TX 78741-0000

CAUTION: If you are attaching your tax return to the Form W-7, do not use the mailing address in the instructions for your tax return. Do not send a “copy” of the return to any other IRS office.

You can apply for an ITIN by mail, at any IRS Taxpayer Assistance Center in the United States and at IRS offices abroad.

You can also apply through an Acceptance Agent, (see “What are Acceptance Agents?” later in this publication).

The IRS will send your ITIN in the form of an assignment letter. An ITIN does not change your immigration status or grant your right to work in the United States. An ITIN is for tax purposes only.

GENERAL INFORMATION

What is an ITIN?

An ITIN is a tax processing number, issued by the Internal Revenue Service, for certain resident and nonresident aliens, their spouses, and their dependents. It is a nine-digit number beginning with the number “9”, has a range of numbers from “70” to “88”, “90” to “92” and “94” to “99” for the fourth and fifth digits and is formatted like a SSN (i.e. 9XX-7X-XXXX).

The ITIN is only available to individuals who are required to have a taxpayer identification number for tax purposes but who do not have, and are not eligible to obtain a SSN from the Social Security Administration (SSA). Only individuals who have a valid filing requirement or are filing a U.S. Federal income tax return to claim a refund of over-withheld tax are eligible to receive an ITIN. Generally a U.S. Federal income tax return must accompany the ITIN application, unless the individual meets one of the “exceptions.” (See “Exceptions”). Caution: Applications for individuals who are requesting an ITIN as a spouse or a dependent of a primary taxpayer, must attach a valid U.S. Federal income tax return to the Form W-7.

ITINs are issued regardless of immigration status because both resident and nonresident aliens may have United States Federal tax filing and payment responsibilities under the Internal Revenue Code.

What is the purpose of an ITIN?

ITINs are used for tax purposes only, and are not intended to serve any other purpose. IRS issues ITINs to help individuals comply with the U.S. tax laws, and to provide a means to efficiently process and account for tax returns and payments for those not eligible for Social Security Numbers.

An ITIN:

1. Does not authorize work in the U.S. or provide eligibility for Social Security Benefits or the Earned Income Tax Credit.
2. Is not valid for identification outside of the tax system.
3. Does not change immigration status.

An applicant must enter his/her ITIN in the space provided for the SSN when completing and filing a U.S. Federal income tax return (Form 1040, 1040A, 1040EZ, 1040NR, 1040NR-EZ, 1040X).

NOTE: When applying for an ITIN for the purpose of filing a valid U.S. Federal income tax return, the applicant is required to file the tax return with the Form W-7/W-7(SP) application unless specifically meeting an exception to the tax return requirement. (See “Exceptions”).

When did IRS start issuing ITINs and why?



In 1996, the U.S. Department of the Treasury issued regulations that introduced the ITIN, and required foreign persons to use an ITIN as their unique identification number on Federal tax returns (T.D. 8671, 1996-1 C.B.314). The regulations

were intended to address the concern by the IRS and the U.S. Department of the Treasury that, without a unique number, taxpayers could not be identified effectively and tax returns could not be processed efficiently.

Are ITINs valid for identification?

ITINs are not valid for identification outside of the tax system and should not be offered as identification for non-tax purposes. ITIN applicants are not required to apply in person.

How do I know if I need an ITIN?

If you do not have a Social Security Number (SSN) and are not eligible to obtain a SSN, but you are required to furnish a tax identification number to file a U.S. Federal

income tax return, be claimed as a spouse or dependent on a U.S. tax return or furnish a tax identification number for any other Federal tax purpose, you must apply for an ITIN. An alien individual cannot have both an ITIN and a SSN.

If you are eligible for a SSN, you must first apply for one. Persons eligible to receive a Social Security Number are not eligible to receive an ITIN. Treasury regulations governing Internal Revenue Code Section 6109 require a valid taxpayer identification number for each person listed on the tax return. If the Social Security Administration denies the applicant's request for a SSN they will issue a letter of denial. That letter must be attached to the Form W-7 when it is submitted to the IRS.

NOTE: Although most applicants are required to file their U.S. Federal income tax return by attaching it to Form W-7/W-7(SP), there are exceptions to this requirement. (See “Exceptions”).

Who Must Apply?

Any individual who is not eligible to obtain a SSN but who must furnish a taxpayer identification number to the IRS must apply for an ITIN on Form W-7/W-7(SP).

Do not complete Form W-7/W-7(SP) if you have a SSN or if you are eligible to obtain a SSN (i.e., A United States citizen or person lawfully admitted for employment).

Applicants must have a valid filing requirement and file an original valid U.S. Federal income tax return with their ITIN applications, unless they meet one of the exceptions listed later in this publication.

NOTE: “Exceptions” relate to the “tax return filing requirement only”. They do not relate to the “tax purpose”. Therefore, all individuals must have a “tax purpose” for requesting an ITIN, whether or not a U.S. Federal income tax return is submitted to the IRS with Form W-7.

To determine if you have a filing requirement, see Publication 17, “Your Federal Income Tax” or Publication 519, “A United States Tax Guide for Aliens”.

Examples of who needs an ITIN:

- A nonresident alien individual eligible to obtain the benefit of a reduced tax withholding rate under an income tax treaty. See Pub. 515, “Withholding of Tax on Nonresident Aliens and Foreign Entities”.
- A nonresident alien individual not eligible for a SSN who is required to file a U.S. Federal income tax return or who is filing a U.S. tax return only to claim a refund.

- A nonresident/resident alien individual not eligible for a SSN who elects to file a joint U.S. Federal income tax return with a spouse who is a U.S. citizen or resident.
- A U.S. resident alien (based on the substantial presence test) who files a U.S. Federal income tax return but who is not eligible for a SSN. For information about the substantial presence test, see **Pub. 519**, U.S. Tax Guide for Aliens.
- An alien spouse, claimed as an exemption on a U.S. Federal income tax return, who is not eligible to obtain a SSN.
- An alien individual eligible to be claimed as a dependent on a U.S. Federal income tax return but who is not eligible to obtain a SSN. To determine if an alien individual is eligible to be claimed as a dependent on a United States Federal income tax return, see **Pub. 501**, “Exemptions, Standard Deductions, and Filing Information”, and **Pub. 519**, “A United States Tax Guide for Aliens”.
- A nonresident alien student, professor, or researcher who is required to file a United States Federal income tax return but who is not eligible for a SSN.

If you have an application for a SSN pending, do not file Form W-7/W-7(SP). Complete Form W-7/W-7(SP) **only** when the SSA notifies you that a SSN cannot be issued. Proof that the SSA denied your request for a SSN must be included with your submission of Form W-7/W-7(SP), whether you are attaching your U.S. Federal income tax return or requesting an ITIN under one of the “exceptions”.

To request a SSN, use Form SS-5, “Application for a Social Security Card, (Original, Replacement or Correction)”. This form can be obtained from the SSA or downloaded from the IRS web site at <http://www.irs.gov>. To find out if you are eligible to obtain a SSN, contact your nearest SSA Office.

IMPORTANT NOTE: If you are filing for an extension of time to file a United States Federal income tax return (Form 4868 or Form 2688) or making an estimated payment with Forms 4868, 2688, or Form 1040-ES/1040-ES (NR), “Estimated Tax for Individuals/Estimated Tax for Nonresident Aliens” **do not** file the Form W-7/W-7(SP) with these forms. Write **“ITIN TO BE REQUESTED”** wherever the ITIN or SSN is requested. An ITIN will be issued **only** after you have filed a valid U.S. Federal income tax return and have met all other requirements.

When will my ITIN be deactivated?

ITINs will be deactivated if not used on a federal income tax return for any year during a period of five consecutive years. The IRS will not deactivate an ITIN that has been used on at least one tax return in the past five years.

To ease the burden on taxpayers and give their representatives and other stakeholders time to adjust, the IRS will not begin deactivating unused ITINs until 2016. This grace period will allow anyone with a valid ITIN, regardless of when it was issued, to still file a valid return during the upcoming tax-filing season. A taxpayer whose ITIN has been deactivated and needs to file a U.S. return can reapply using Form W-7. As with any ITIN application, original documents, such as passports, or copies of documents certified by the issuing agency must be submitted with the form.

How do I apply for an ITIN?

You must complete Form W-7/W-7(SP) and attach a valid U.S. Federal income tax return, unless you qualify for an exception. Include your original, or copy certified by the issuing agency of identity documents along with the “letter of denial” from the SSA (if applicable). Because you are filing your tax return as an attachment to your ITIN application, you should not mail your return to the address listed in the Form 1040, 1040A or 1040EZ instructions. Instead, send your return, Form W-7/W-7(SP) and proof of identity documents to the address listed in the Form W-7 instructions:

Internal Revenue Service
ITIN Operations
P.O. Box 149342
Austin, TX 78714-9342

You may also apply using the services of an IRS-authorized Acceptance Agent or visit an IRS Taxpayer Assistance Center (TAC) in lieu of your mailing the information to the IRS. TACs in the United States provide help with ITIN applications on a walk-in basis. TACs are available to:

- Assist taxpayers in the preparation of the Form W-7/W-7(SP).
- Answer questions about Form W-7/W-7(SP).
- Review and/or validate your identity. Designated TAC offices will validate passports and National ID documents for primary, secondary and dependents in person.



- Forward your Form W-7/W-7(SP), and accompanying U.S. Federal income tax return, if applicable, to the IRS processing service center.

For overseas assistance contact one of the overseas IRS offices listed in the front of this publication.

Telephone assistance is also available by calling the IRS toll-free number at 1-800-829-1040 (inside the United States) for information and help in completing your Form W-7/W-7(SP) and your tax return.

International applicants may call 1-267-941-1000 (not a toll free number) for assistance. This number is not available for residents of the U.S.

REMINDER: Use the most current version of Form W-7 to avoid delays in processing or the application being returned to you.

Deceased Taxpayers

Beginning April 1, 2009, the IRS began processing Forms W-7, *Application for IRS Individual Taxpayer Identification Number*, for deceased taxpayers. When an ITIN is being requested, the word “Deceased” should be written across the top of the Form W-7. In addition to meeting all requirements in the Form W-7 instructions for obtaining an ITIN, **additional documentation** to substantiate the death of the individual must be provided pursuant to the chart below.

IF YOU ARE	THEN YOU MUST ATTACH
(a) The surviving spouse filing an original or amended joint return with your deceased spouse	<ul style="list-style-type: none"> • Form W-7 • US Federal income tax return • Documentation substantiating “identity” and “foreign status”
(b) The court appointed executor or administrator of the deceased’s estate filing an original tax return on behalf of the deceased	<ul style="list-style-type: none"> • Form W-7 • US Federal income tax return • Documentation substantiating “identity” and “foreign status” along with • A court certificate showing your appointment
(c) Not the surviving spouse claiming a refund on a joint return and there was no executor or administrator of the deceased’s estate appointed	<ul style="list-style-type: none"> • Form W-7 • US Federal income tax return • Documentation substantiating “identity” and “foreign status” along with • Form 1310 • A copy of the Certificate of Death

- If a Form W-7 is attached for a deceased taxpayer under 18 years of age, then one of the documents

proving “identity” must be a birth certificate, unless a passport is submitted.

Where Can I get a Form W-7/W-7(SP)?

Forms can be obtained by:

- Calling 1-800-829-3676 within the continental United States only. Bulk quantities may also be ordered through this number.
- Using a personal computer to download Form W-7/W-7(SP) from our world wide web site at <http://www.irs.gov>
- Visiting the nearest IRS Taxpayer Assistance Center or Overseas IRS office.
- Writing to:
Internal Revenue Service
National Distribution Center
1201 N. Mitsubishi Motorway
Bloomington, IL 61705-6613

What information must be included on Form W-7/W-7(SP)?

Form W-7/W-7(SP) will request the following type of information:

- Reason for applying
- Applicant’s full name (and birth name if different)
- Applicant’s foreign address
- Applicant’s country of citizenship
- Applicant’s mailing address
- Applicant’s date and place of birth
- Information about a passport or visa
- The signature of the applicant, or if the applicant is a dependent under the age of 18, it may be the signature of the parent, court appointed guardian or Power of Attorney. (see “Signature” later in this Publication).

NOTE: In addition to completing the form you must also attach appropriate identification documents and a valid US Federal income tax return (unless an exception to the return filing requirement is met).

General information for the completion of Form W-7/W-7(SP) begins on Page 13.

Where do I attach my Form W-7/W-7(SP)?

If you are required to file a U.S. Federal income tax return with this form, attach Form W-7/W-7(SP) to the **front** of your return. If you are applying for more than one ITIN for the same return (such as for a spouse or

dependents) attach all Forms W-7/W-7(SP) in the order that the individuals are listed on the tax return.

Where do I file my Form W-7/W-7(SP)?

By Mail: Mail your completed application, your original U.S. Federal income tax return and any other substantiating or supporting identification documents listed on the Supporting Documentation Table to:

Internal Revenue Service
ITIN Operations
P.O. Box 149342
Austin, TX 78714-9342

If you are using a private delivery service send your Form W-7 package to:

Internal Revenue Service
ITIN Operations
Mail Stop 6090-AUSC
3651 S. Interregional, Hwy 35
Austin, TX 78741-0000

CAUTION: Do not use the mailing address in the instructions for your U.S. Federal income tax return; use the address above. Do not send a copy of the return to any other IRS office.

In Person: You can apply for an ITIN by bringing your completed forms and documentation to any IRS Taxpayer Assistance Center(TAC) in the United States and most IRS offices abroad. Participating IRS TACs will only certify passports and national identification cards that are original documents or copies certified by the issuing agency. These documents are returned to you on site. Any other types of documents presented at TACs are forwarded with the complete application to the IRS processing center.

Through Acceptance Agents: You can also apply through an Acceptance Agent authorized by the IRS to facilitate the ITIN application process for you. To obtain a list of authorized Acceptance Agents in your area, visit the IRS website at <http://www.irs.gov>.

REMINDER: Keep a copy of your application for your records.

What are Acceptance Agents?

Acceptance Agents (AAs) are persons (individuals or entities (colleges, financial institutions, accounting firms, etc.)) who have entered into formal agreements with the IRS that permit them to assist applicants in obtaining ITINs. Certifying Acceptance Agents (CAAs) are individuals or entities who assume a greater

responsibility. They are authorized to verify the applicant's claim of "identity" and "foreign status", by reviewing supporting documentation and verifying the authenticity, accuracy and completeness of the documents for primary and secondary taxpayers. They will submit Form W-7, U.S. federal income tax return and any supplemental documentation to the IRS on your behalf. Applications for dependents must be submitted with the original documents or copies certified by the issuing agency. In addition, once the ITIN is issued, the CAA receives your number directly from IRS.

IRS does not charge a fee to obtain an ITIN, however, a person acting as an AA/CAA may charge a fee for his/her services. A list of authorized Acceptance Agents is available on the IRS website at <http://www.irs.gov>.

NOTE: Even if you are utilizing the services of an Acceptance Agent, you must follow all procedures outlined in this Publication for obtaining an ITIN, (i.e. attaching Form W-7/W-7(SP) to your U.S. Federal income tax return, unless you meet one of the "exceptions" to the tax return filing requirement). Acceptance Agents only facilitate the application process and are not authorized to issue the ITIN directly.

Will I have to pay to get an ITIN?

The IRS does not require payment of a fee for issuing an ITIN. However, fees may apply if you choose to use the services of an Acceptance Agent.

When should I apply for my ITIN?

Complete Form W-7/W-7(SP) as soon as you are ready to file your U.S. Federal income tax return, since you must attach the return to your application. However if you meet one of the exceptions to the tax return filing requirement, submit your completed Form W-7/W-7(SP), along with your proof of "identity" and "foreign status" and the required supplemental documents to substantiate your qualification for the exception, as soon as possible after you determine you are covered by an exception. You can apply for an ITIN any time during the year; however, if the tax return you attach to Form W-7 is filed after the return's due date, you may owe interest and/or penalties.



How long does it take to get an ITIN?

If you qualify for an ITIN and your application is complete, you will receive a letter from the IRS assigning your tax identification number usually within six weeks (8 to 10 weeks if requested during peak tax time (January 15 through April 30) or from abroad). Applications mailed from abroad may take considerably longer. If you have not received a response within the referenced time period, you may call 1-800-829-1040 (toll-free within the United States) to request the status of your application. Taxpayers overseas can contact one of the IRS offices listed in the front of this publication or call 1-267-941-1000 (not a toll-free number).

Can I get an ITIN if I am an undocumented alien?

Yes, if you are required to file a U. S. Federal income tax return or qualify to be listed on another individual's tax return as a spouse or dependent, you must have either a valid SSN or an ITIN. If you are an undocumented alien and cannot get a SSN, you must get an ITIN for tax purposes. Remember, having an ITIN does not:

- Give you the right to work in the United States,
- Change your immigration status, or
- Entitle you to the Earned Income Tax Credit or Social Security benefits.

Can I e-file a tax return with an ITIN?

Yes, however, you can only e-file a tax return using an ITIN in the calendar year following the year in which you receive it. For example, if you apply for and receive an ITIN this year, you may not e-file any tax return (including prior year returns) using that ITIN, until next year.

Due to IRS e-file limitations on prior year tax returns, in January 2013 you may only e-file tax returns for years 2012 and 2011.

Is the Form W-7 available in any foreign language?

Yes, this form is available in Spanish as Form W-7(SP), Solicitud de Número de Identificación Personal del Contribuyente del Servicio de Impuestos Internos.

DOCUMENTATION**What are the documentation requirements when applying for an ITIN?**

The Form W-7 Application must be accompanied by the following documentation when applying for an ITIN:

1. Your original valid U.S. Federal income tax return for which the ITIN is needed along with the letter of

denial from the SSA (if applicable). However if one of the exceptions to the tax return filing requirement applies, you must also attach the documentation that is required to support that exception.

2. The original documents or copies of documents certified by the issuing agency that substantiate the information provided on the Form W-7/W-7(SP). The supporting documentation must be consistent with the applicant's information provided on Form W-7/W-7(SP). For example, the name, date of birth and country of citizenship on the document you submit, must be the same as lines 1a, 4 and 6a of the Form W-7/W-7(SP).

NOTE: IRS will mail your original documents (passport, etc.) back to you at the mailing address you entered on your Form W-7. If you plan to move, ensure that you use a mailing address where you will be able to receive your mail. By visiting a designated IRS TAC office to apply for an ITIN, an IRS employee can review your passport and National ID and return it to you immediately. This alleviates any long delays waiting for your original documentation (passports, etc.) to be returned to you by mail.

Applicants are permitted to include a prepaid Express Mail or courier envelope for faster return delivery of their documents.

The documentation you present must:

1. Verify your identity by containing your name and photograph and support your claim of foreign status. (see "Supporting Documentation Table" in the Exhibits).
2. Be an original document
3. Be a copy of an original document if you do any of the following:

- Have the copies certified by the issuing agency of the original record.
- Officers at U.S. Embassies and Consulates overseas may provide notarial and authentication services. Contact the Consular Section, American Citizens Services of the U.S. embassy or consulate in advance to determine the hours of operation for these services.

4. Notarized copies are acceptable for these situations ONLY:

- Reason code "a" and "h" are both checked and no tax return is attached and claiming a Tax Treaty Benefit.
- Military spouses and military dependents without

an SSN who need an ITIN. (Military spouses use box “e” on Form W-7 and dependents use box “d”). Exceptions to the new documentation requirements will be made for military family members satisfying the documentation requirements by providing a copy of the spouse or parent’s U.S. military identification, or applying from an overseas APO/FPO address. Reason code “d” is checked with an FPO/APO address or military ID only. Reason code “e” is checked with an FPO/APO address or military ID only.

NOTE: Documents must be notarized by a United States public notary legally authorized within his or her local jurisdiction or a foreign notary legally authorized as outlined by the Hague convention who will attach an Apostille to the document. The Apostille must remain attached to the document.

5. Be current, i.e. not expired. The definition of “current” for applying for an ITIN is as follows:

- Birth certificates do not contain expiration dates and, therefore, will be considered current.
- Passports and National Identification cards displaying an “expiration” date will be considered current only if the date displayed on the document has not expired prior to the date the Form W-7/ W-7(SP) is submitted.
- School records are valid only for dependents under the age of 14 (or under 18 years of age if a student). School records will be considered current if they are for a school term that ended within 12 months of the date of the Form W-7 application. For example, for a January 2015 application, the school term must have ended January 2014 or later. Acceptable documents include report cards, transcripts or provider letters issued by the school and signed and stamped by a school official. The school record must contain the student’s name, course work with grades (unless under age 6), date of grading periods (unless under age 6), school name and address.
- Medical records are valid only for dependents under the age of 6. Medical records will be considered current if the date displayed on the medical record is not more than one (1) year from the date of last immunization or provider letter. The only acceptable medical record is a shot or immunization record which documents the

patient’s name and chronological dates of the patient’s medical history and care. The record must contain the child’s name, date of birth, and verifiable address. It must also document the name, address and phone number of the doctor, hospital, or clinic where the last treatment was administered. If this information is not included on the medical record you must provide a dated letter on official letterhead from the federal authority, physician, hospital or clinic who administered the latest care of the child. If a date of entry is required for the applicant on Form W-7 Line 6d, the medical record must be from a U.S. facility.

“Original” documents you submit will be returned to you. You do not need to provide a return envelope. “Copies” of documents will not be returned. If your original documents are not returned within 60 days, you may call the IRS (see “Telephone Help”) to inquire as to the status. Applicants are permitted to include a prepaid Express Mail or courier envelope for faster return delivery of their documents. The IRS will then return the documents in the envelope provided by the applicant.

What documents are acceptable as proof of identity and foreign status?

IRS has streamlined the number of documents the agency will accept as proof of identity and foreign status to obtain an ITIN. If you submit an original passport or a properly notarized or certified copy of a valid passport you do not need to submit any other documents from the list below.

NOTE: Copies of a passport must include the U.S. visa pages if a visa is required for your Form W-7 application.

If you do not have a passport, you must provide a combination of current documents (at least two or more) that show your name and photograph and support your claim of identity and foreign status. With the exception of children under 14 years of age (under 18 years of age if a student), at least one document you present must contain a recent photograph. If you are requesting an ITIN as a “dependent”, documentation to prove “foreign status” and “identity” must include a civil “Birth Certificate”, unless a Passport is submitted.

NOTE: If you submit copies of original documents that display



information on both sides (front and back), the copy that is submitted must also show the information from both sides of the document.

Listed below are the only documents that will be accepted by IRS:

1. Passport (stand alone document)
2. United States Citizenship and Immigration Services (USCIS) photo identification
3. Visa issued by the US Department of State
4. United States driver's license
5. United States military identification card
6. Foreign driver's license
7. Foreign military identification card
8. National identification card. The document must be current, and contain the individual's name, address, photograph, date of birth and expiration date (i.e. Mexican Matricula card)
9. U. S. State identification card
10. Foreign voter's registration card
11. Civil birth certificate *
12. Medical records (dependent's only – under 6 years of age;
13. School Records (dependent's only – under 14 years of age; under 18 years of age if a student) *

(* may be used to establish foreign status only if documents are foreign.)

NOTE: You may subsequently be requested to provide a certified translation of foreign language documents.

If you have applied for a Social Security Number, but the Social Security Administration has denied your request, your ITIN application must also contain an official letter, form, or other documentation from the SSA providing proof that your application was denied. (This pertains only to persons who have been issued a Visa from the US Department of State that enables them to obtain a SSN.) This proof must be attached to your Form W-7/W-7(SP) or your application for an ITIN will be rejected.

Students who enter the U.S. on an “F”, “J”, or “M” visa, but who will not be employed and are here only for the purpose of study, or persons present in the U.S. who are receiving only honoraria payments, do not have to go to the SSA to try and obtain a Social Security Number first. A letter from the Designated School Official (DSO), Responsible Officer (RO) or Authorized School Official can be submitted in lieu of a letter from the SSA when a U.S. Federal income tax return is attached or when an exception is being claimed. Student and Exchange Visitor Program (SEVP) approved institutions for non-resident alien students and exchange visitors and their

dependents classified under section 101(a)(15)(F), (M) or (J) of the Immigration and Nationality Act {8 U.S.C. 1101(a)(15)(F), (M) or (J)} A certification letter is required for each Form W-7 application: primary, associated secondary (spouse) and dependent(s). (See the Exception Chart at the end of this publication.)

What is a National Identification Card?

Some foreign governments issue identification cards to their citizens. IRS will accept these cards as proof of identity and foreign status in combination with other documents described above if the card is current (i.e. not expired) and contains the applicant's name, address, photograph, and date of birth.

EXCEPTIONS

What are the “exceptions” to the requirement to attach a U.S. Federal income tax return?

Although most ITIN applicants must attach a valid U.S. Federal income tax return to their Form W-7 application, there are limited circumstances under which an ITIN will be issued without an attached return. If any of the five exceptions listed below apply to you, you will **not** need to attach a tax return to your W-7/W-7(SP).

These exceptions are explained in detail in the Exhibit section at end of this Publication. If you claim an exception to the requirement to submit a valid original U.S. Federal income tax return with Form W-7/W-7(SP) you must submit proof of your claim in lieu of the tax return.

NOTE: Applicants with a VISA that is valid for employment, and who will be employed in the U.S., should first apply for a SSN with the Social Security Administration (SSA).

If you are unable to obtain a SSN after completing Form SS-5, a denial letter from the SSA must be attached to your Form W-7/W-7(SP) or your application will be rejected. Remember, you are not eligible for an ITIN if you are eligible to obtain a SSN.

Exception 1. Third Party Withholding on Passive Income;

■ Third Party Withholding on Passive Income. IRS information reporting and/or tax withholding is required and apply to third parties (frequently banks and other financial institutions), who will request a TIN from you to enable them to comply with U.S. Treasury Regulations. To obtain an ITIN under this exception, you must include



